

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

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SHAWN L. BURKS,
Plaintiff,

)

)

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

V.S.

) CASE NO: 1:07-CV-337-MEF

)

DAVE SUTTON, SHERIFF, et al.,
Defendant(s)

)

**PLAINTIFF'S AFFIDAVIT AND MOTION IN
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

Before me the undersign authority a notary public in and for said County and State of Alabama at large, personally appears Shawn L. Burks, AIS# 188755, who being known to me and first duly sworn by me depose and says under Oath as follows;

My name is Shawn Burks, I am over the age of (18) eighteen years, I make this affidavit and response on personal knowledge, and I am competent to testify to the matters as stated herein.

On March 3, 2007 while I was an Inmate in the Coffee County Jail for the offense of Two counts of Attempting to committ a controlled substance crime.

On this date, an incident occured in the Coffee County Jail with a group of Inmates that wonted a smoke break. The Male Jailer left to get the Inmates cigaretts, and while he was gone, the Female Deputy, Officer Stokes came back to the cell block # 2 with her taiser gun ordering the Inmatews to lock down. She started up-stairs and inmate Snell was disruptive, and the Officer tased him several times, running behind him, as he made his way to his cell, and she later handcuffed him. After the Inmates that didn't lock down say what happen, they immediately locked down.

Female Sheriff Deputy Stokes and another J.S.O. that work at the Jail began going around making cell-check to make sure everyone's door was locked , Deputy Stokes then was leaving the cell block # 2 with with Snell being handcuffed, someone from the upostairs teer threw a liquid substance on female Deputy Stokes, she pointed up-stairs and ask who threw that on her? the officer with her said that it came from cell # 17. Deputy Stokes then left the cell block with Inmate Snell and the other Officer.

About (5) five minutes later (2) two other male Sheriff deputies came in cell block # 2 with shot guns, where we were all locked down, and ran up-stairs yelling "open 17 cell, shortly after that, I hears shot gun blast and inmates yelling "it wasn't me!" "I didn't do anything" !

The Officer was yelling "you wanna throw piss!

A few minutes later Inmate Alex Pyatt annd Timothy Council was brought down stairs in handcuffs, and all the Inmates was screaming and a lot of people was cussung and some was yelling they were violating our rights. sheriff Deputy Shelton then started waving his shotgun back and fourth into cells yelling "shut your mouth"! they were standing at the bottom of the stairs when he was waiving the shot-gun, in a violent rage.

All of the Inmates was afraid, all they knew was they had heard a shot-gun blast, and no one knew that it was a bean bag round in the shot-gun, all we knew at that time was the Deputy had shot some inmates with the shot-gun.

The Officer then pointed hos shot-gun in cell # 9 and started cussung at the Inmates next door to me, he then, he then pointed the shot-gun in my cell # 8 and started yelling and screaming. Me and the other Inmate in the cell with me was telling him that was wrong and our rights was violated. Sheriff Deputy shelton then fired into my **LOCKED CELL**, hitting me in the stomach. With me not knowing it was a bean bag, I thought I was dying from the shot-gun blast.

Since that time, I have suffered Mental and physical problems I repeatedly ask to see a doctor at the Coffee County Jail and was told, I was on the list, until Captain Moss received the grievance form I filled out the ^{same} night ~~of~~ the incident, I didn't go to the doctor until the following monday, March 5 , 2007.

As soon as I saw the Sheriff Sutton, I told him that I was shot with a shot-gun while I was locked in my cell, and the sheriff said, "if my officer shot you he had a good reason.

Captain Moss personally told me that he had watched the video tape and he was aware that Officer Shelton was wrong and that he had a talk with Officer shelton. He also said that Officer Shelton hated it when a female Officer is assaulted by an Inmate. this conversation with ~~_____~~ ^{Captain Moss} occurred while we was at the Doctor's office.

The Doctor observed my wounds, and ask me what had happen, and before I could respond, Captain Moss interrupted me and explained in his words what had happen. The Doctor ran some test on me and wrote a prescription, but captain moss never got the prescription filled, or never gave me anything for the pain or injury.

To this day, I still suffer from mental , emotional and physical mpain in my grown area.

The defendant's contend in their response that this Plaintiff should not be given relief because he did not exhaust his administrative remedies.

The Plaintiff did-in-fact submit a Grievance and it was not answered but rather, it was destroyed, and plaintiff filled a second grievance, and he has attached a copy of that grievance and is marked as **(PLAINTIFF'S EXHIBIT 1)**;

The Plaintiff will also submit an affidavit of Inmate ^{Kenneth} ~~Shawn~~ Flemming, an Inmate that was present during this entire incident, who was also in the Coffee County Jail during this time, and will submit the affidavit as **(Exhibit #2)**

To show that the Plaintiff is still experiencing Pain, he will submit the sick call slip he has submitted since he has been in the Alabama Department of Corrections, where he was attempting to get help for his physical problems, and will submit it as Plaintiff's **(Exhibit # #3)**

The Plaintiff has ask this Court to compel discovery of other documents that he requested to substantiate all of his claims, and the Defendant's has Objected to the Discovery

Request, and the Court Granted same, the Discovery will show that the Plaintiff has-in fact suffered, physical, mental and emotional damage as a result of the shot-gun-blast to his grown area, and the shooting was not justified, and the discovery of the Video ? Tape will clearly show that at the time of the shooting, the Plaintiff posed no danger to any jail staff, or to other Inmates, and that he was locked in his assign cell at the time.

The Plaintiff believes that this Court should allow the proceedings to proceed, and compel the Defendant's to produce the material requested by the Plaintiff

Respectfully Submitted

Shawn L. Burks
Shawn Burks # 188755

CONCLUSION

For the reasons stated herein, this Pro-Se Plaintiff respectfully request that this Honorable Court will Issue an Order for the Ddefendant's to produce all of the Discovery material requested by the Plaintiff, so that the record can be developed for this Court, and it will fully show that the Plaintiff was shot while he was locked in his cell, and posed no danger to the staff or other inmates, and will also show that there was no riot in the Coffee County Jail on the dday in question, and the actions of the officer was an excessive and unnecessary use of force.

Shawn Burks
Shawn L. Burks # 188755

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the parties listed below by placing a copy of same in the United States mail properly addressed and postage pre-paid this 30 Day of August 2007

WEBB & ELEY, P.C.
P.O. BOX 240909
MONTGOMERY, ALABAMA 36124

Shawn Burks
SHAWN BURKS # 188755 B2-13
ELMORE CORRECTIONAL FACILITY
P.O. BOX 8
ELMORE, ALABAMA 36025

NOTARY SERVICE

SWORN TO AND SUBSCRIBED BEFORE ME THIS
30 DAY OF August, 2007.

[Signature]
Notary Public

My commission Expires 2/12/2011;

EXHIBIT A

Coffee County Jail
Dave Sutton Sheriff
Richard Moss Administrator

Grievance Form

Your Name: Shawn Lavon Burks

Date of Incident Leading to Complaint: March 3, 2007

STATEMENT: I have been requesting
Medical Attention resulting from a
Wound I received after being shot with
a Bing Bar in a shot gun. I and other
inmates have repeatedly asked to see
a doctor. I have pain in my lower groin
area blood in my urine and severe
headaches as a result. I also have
severe swelling and discoloration. I and
all the other inmates feel that action
should be taken because Deputy (Shelton)
shot me like a dog in a cage out of
anger and that I posed NO threat
to him at all. I'm also in serious need
of Medical Attention.

List of Witnesses, if any:

Demetrius H. H. H. Emmanuel Brownfield
Justin Knight
Robby Sturgis

Place Grievance in an envelope, your name on outside of envelope, and give to CO who will see it gets to the Jail Administrator.

**PRISON HEALTH SERVICES, INC.
SICK CALL REQUEST**

Print Name: SHAWN LAVON BURKE Date of Request: 6-15-07
ID # 138855 Date of Birth: 02-1-34 Location: DELMORE
Nature of problem or request: HAVING PAINS IN MY
GROIN AREA OFF AND ON NOT ALL THE TIME
BUT SOMETIMES ITS DIFFICULT TO WALK DUE TO
SHOTGUN BLAST TO THE STOMACH Bing
Shawn L. Burke
Signature

DO NOT WRITE BELOW THIS LINE

Date: 6/19/07
Time: 4:45 AM PM
Allergies: N/A

RECEIVED
Date: _____
Time: _____
Receiving Nurse Initials: _____

(S)ubjective:

(O)bjective (V/S): T: 98² P: 64 R: 20 BP: 140/20 WT: 205

(A)ssessment:**(P)lan:**

Refer to: MD/PA Mental Health Dental Daily Treatment Return to Clinic PRN
CIRCLE ONE

Check One: ROUTINE () EMERGENCY ()

If Emergency was PHS supervisor notified: Yes () No ()

Was MD/PA on call notified: Yes () No ()

Shawn L. Burke
SIGNATURE AND TITLE

WHITE: INMATES MEDICAL FILE

YELLOW: INMATE RETAINS COPY AFTER NURSE INITIALS RECEIPT

EXHIBIT C

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SHAWN L. BURKS,
Plaintiff,

)

V.S.

) Case No; 1:07-CV-337-MEF

)

DAVE SUTTON, SHERIFF, et al.,
Defendant(s)

)

AFFIDAVIT OF KENNETH FLEMMING

Before me the undersign authority a notary public in and for said county and the State of Alabama at large, personally appears Kenneth Flemming, who being known to me and being first duly sworn by me depose and says under Oath as follows;

My name is Kenneth Flemming, AIS# ²⁵²²⁵¹ [REDACTED], I am over the age of (18) eighteen years I make this Affidavit on personal knowledge, without any promises or threats, and I am willing to testify to the matters as stated herein.

At the time given rise to the incident in question, I was an Inmate in the Coffee County Jail.

On the night of March 3, 2007 between the hour of 10:00 PM and 10:30 PM on Saturday

Night, an altercation happen between some Inmates and police concerning cigarett breaks, so the officer called and verified the authorization for the smoke breaks.

A female Officer came back to the Cell Block # 2 with her taser gun out and told everybody to lock down. Most of the Inmates went to their cell and locked down, as ordered. It was a few who didn't lock down. One of the Inmates who didn't lock down, was shot with the taser, by the female officer, then after that happen, everybody did lock down as instructed.

the Police went around and made sure all doors was locked , and as they were ready to leave out of the cell block, some inmate from the up-stairs section threw something liquid on the female officer as she was leaving out of the cell block, and she ask the Inmates "WHO THREW THAT ON ME?" THE OFFICER SAID IT CAME FROM CELL # 17 UPSTAIRS. After that, they left out of cell block #2 and a few minutes later (2) two male sheriff deputies came into cell block #2 with shot-guns and J.S.O who worked at the County Jail and they rushed upstairs screaming "WHERE IS THE MOTHER-FUCKER AT" and one of the officers yelled "OPEN CELL # 17, he was on the radio and all I heard was Bang, Bang and a popping sound, and the Inmates was screaming like

they were about to die! saying, "i didn't do anything!" . After that I saw the officer dragging the Inmate downstairs in handcuffs. they were on the fourth or fifth step from the bottom, when they pointed the gun at me. I and two more Inmates was in cell # 9 when the officer pointed the gun at me and said "WHAT THE FUCK YOU LOOKING AT!", I'LL SHOOT YOUR ASS!", so I backed up because I was scared for my life and the officer pointed the gun in cell # 8 next to us and started cursing also. I heard Shawn burks say "IT'S AGAINST THE LAW TO SHOOT ME, I'ME LOCKED DOWN IN MY CELL"! but the officer shot in the cell anyway and after he fired the gun, he then ran up to the cell bars and started beating the butt of the shotgun against the bars like he was trying to scare Shawn Burks, He told Shawn he would kill him, then he started to walk toward the exit door of cell block 2, and the officer was yelling, "yall dont run this jail, we run this jail" we do what we want to do here"

After everything was over, the sheriff came in and Shawn was telling him that the Officer had shot him while he was locked down and I heard the sheriff tell Shawn that "IF HIS OFFICER SHOT HIM, HE HAD A GOOD REASON", then Shawn started telling the sheriff, he need to go to the Doctor, so Shawn filled out a Grievance form that night and me and other Inmates signed it as witnesses.

I have known Shawn for about (8) eight months, while we were in the County Jail, and he was always quiet and always got along with everybody, including the officers who work in the Jail.


Kenneth Flemming # ~~252251~~
252251

NOTARY SERVICE

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 30 DAY OF August, 2007


Notary Public

MY COMMISSION EXPIRES 2/12/2011: